IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.601 OF 2007

M/s.Shankar Cotton Co. ...Petitioner

vs.

1.Solapur Vinkar Sahakari Soot Girni Ltd.Solapur

2.Maharashtra State Co-op Bank Ltd. ...Respondents

Mr.K.K.Tated for the Petitioner
Mr.S.D.Patil for Respondent no.1.
Mr.Sandesh Deshpande i/b Mr.Kisan D. Sukre for Respondent no.2.

CORAM: A.S.OKA,J.
DATE : MAY 4,2007.

ORAL JUDGMENT:

1. Heard Advocates appearing for the parties. Considering the nature of the impugned order, the Writ Petition is taken up for final hearing at the stage of admission.

2. The first Respondent is the original Plaintiff. In the suit field by the first Respondent, the present Petitioner was the defendant who had filed a counter claim. The counter claim was partly decreed and a money decree was passed against the first Respondent. An execution application was filed by the Petitioner for executing the money decree. Auction sale of the property of the first Respondent was ordered. The Petitioner offered bid in the auction sale and the his bid was accepted by the Trial Court. An application was made by the Petitioner before the executing court for extension of time to

deposit the sale price. In fact, two such applications were made at Exh.79 and Exh.88. The said Applications were allowed by the executing court.

3. The second Respondent filed an Application at Exh.84 contending that the requisite amount was not deposited by the Petitioner within the time stipulated under Rule 85 Order XXI of the Code of Civil Procedure,1908. The impugned order dated 22nd November 2005 was passed on the said Application by which the sale dated 15th April 2005 in favour of the Petitioner was set aside by holding that no compliance was made with the mandatory provision of Rule 85 of Order XLI of the said Code. The learned Judge held that there was no power vesting in the court to extend the time to deposit the the requisite amount.

4. The learned Advocate for the Petitioner submitted that the application at the instance of the second Respondent was not maintainable. He submitted that in any event while passing the impugned order, the trial court has completely ignored the amendment made to Rule 85 of Order XXI which is applicable for the State of Maharashtra which vests power in the court to extend the time for payment purchase money in certain contingencies. He, therefore, submitted that impugned order deserves to be quashed and set aside. The learned Advocate for the first Respondent pointed out that on 19th January 2005, an order was passed under section 102 of the Maharasthra

Cooperative Societies Act,1960 (hereinafter referred to as the said Act of 1960). By the said order, a liquidator was appointed for the first Respondent-society. He pointed out that the said order was confirmed and final order was passed on 24th February 2005. He submitted that in view of section 107 of the said Act of 1960, the executing court could not have proceeded further as the Petitioner has not obtained leave of the Registrar. The learned Advocate for the Petitioner in reply placed reliance on the decision of this Court in case of State Bank of India Vs. Amravati Zilla Krishi Audyogik Sahakari Sangh Maryadit and others [2004 (4) Bombay Cases Reporter page 434]. He submitted that even post facto leave can be granted.

5. I have considered the submissions. On plain reading of the order dated 22nd November 2005, it is obvious that the learned trial Judge has not at all considered the state amendment made to Rule 85 of Order XXI of the said Code as applicable to the State of Maharashtra. Apart from this fact, in view of the submission made by the Advocate for the first Respondent, the learned Trial Judge could not have proceeded further as the leave of the Registrar as required under section 107 of the said Act of 1960 was not obtained. On this ground itself, the impugned order dated 22nd November 2005 deserves to be quashed and set aside and the Application at Exh.84 will have to be restored. The Petitioner will have to

apply for a leave under section 107 of the said Act of 1960 and after grant of leave, the learned Trial Judge will proceed to decide the Application at Exh.84 in accordance with law. The learned Advocate for the Petitioner states that he will apply for leave within a period of 10 days from today.

6. It will be open for the trial Court to consider the effect of the failure of the Petitioner to apply for and obtain leave of the Registrar on the earlier orders passed in execution application.

7. Hence, I pass the following order :

i) Impugned order dated 22nd November 2005 is quashed and set aside and the Application at Exh.84 is restored to file. Till the Application at Exh.84 is disposed of, direction given by this Court in clause 2 of order dated 25th January 2007 will continue to operate.

ii) The learned executing court will decide the said Application afresh after the Petitioner obtains a leave under section 107 of the Maharashtra Cooperative Societies Act,1960. The said Application shall be decided by the executing Court within a period of six weeks from the date on which the order granting leave is produced by the Petitioner.

iii) It is made clear that all contentions of the parties are expressly kept open.

iv) It will be open for the first and the second Respondent to raise appropriate contentions based on orders under section 102 and 103 of the said Act of 1960.

v) Till the application at Exh.84 is decided, the amount deposited by the Petitioner will continue to be invested in fixed deposit in any nationalised bank as directed by this Court by order dated 25th January 2007.

vi) Writ Petition is partly allowed in above terms with no order as to costs.

vii) Writ to be sent immediately.

JUDGE